IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO.10930 of 2005

DATE OF DECISION: 18.04.2007

Dr.Rajinder Singh ....Petitioner

Versus

State of Punjab and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE L.N. MITAL

PRESENT: Mr.H.S. Minhas, Advocate
for the petitioner.
Mr.B.S. Chahal, AAG Punjab,
for the respondents.

J.S. Khehar, J. (oral)

The petitioner was inducted into the service of the respondents as an Ayurvedic Medical Officer in the year 1990. On 3.10.1999, he submitted an application for 4 days leave from 4.10.1999 to 7.10.1999. Learned counsel for the respondents informs us that the aforesaid application for leave was received in the office of the respondents on 4.10.1999, as 3.10.1999 was Sunday.

The pleadings of the case reveal, that the petitioner was detained by the Chandigarh Police and he remained in police, as well as, in judicial custody from 3.10.1999 to 7.10.1999. After having returned from Chandigarh, he allegedly submitted his joining report along with a letter dated 8.10.1999. Irrespective of the factual position, noticed hereinabove, it is not a matter of dispute, that the petitioner continued to

discharge his duties with effect from 8.10.1999 onwards, without any interruption.

Through the instant writ petition, the petitioner has impugned the order passed by the Director, Ayurveda, dated 7.6.2005 (Annexure P5) informing the petitioner, that the petitioner, by a deeming fiction of law, ought to have been considered as having been placed under suspension with effect from the date of his detention. In this behalf, reference has been made to rule 4(2)(a) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Relevant extract of the aforesaid rule is being extracted hereunder:-

> "a) With effect from the date of his detention if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding 48 hours.

Since arrest of the petitioner had allegedly not come to the notice of the respondents, it is submitted, that on account of oversight, the petitioner was allowed to discharge his duties with effect from 8.10.1999 onwards. So as to remedy, what was not done as far back as on 3.10.1999, the respondents, through the aforestated impugned order dated 7.6.2005, placed the petitioner under suspension on 3.10.1999. Be that as it may, his reinstatement was ordered with effect from 3.10.2000. This has allegedly been done, on the basis of instructions dated 16.5.1998, wherein a directive has been issued by the Chief Secretary of the State, that in case a final decision has not been arrived at, despite the suspension of an employee and one year has elapsed, the employee should be deemed to be reinstated into service.

Consequent upon the passing of the aforesaid order dated

7.6.2005, the petitioner has been issued a letter dated 21.6.2005 (Annexure P8) requiring him to deposit the salary drawn by him during the period he ought to have remained under suspension, after substracting therefrom, the subsistence allowance payable to him. This order of seeking to recover salary (beyond the subsistence allowance) from the petitioner, is also subject matter of challenge at the hands of the petitioner.

We have considered the matter in its totality. The respondents, while passing the aforestated orders in respect of the petitioner, have clearly overlooked the purpose and intent of rule 4(2)(a) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. It is obvious that when an employee has been detained either in police or judicial custody, he is not in an effective position to attend to his duties. Accordingly, when such an eventuality takes place, the aforestated provision, by a deeming fiction of law, requires that such an employee be placed under suspension. The issues herein is not only for the period the petitioner remained under detention. So far as the aforesaid period is concerned, rule 4(2)(a), referred to above, would take appropriate remedial measures in respect thereof. The issue herein is the denial of salary to the petitioner for the period from 8.10.1999 to 3.10.2000 i.e. the period during which the petitioner actually and factually discharged his duties as Ayurvedic Medical Officer, and was regularly paid his emoluments therefor. We are satisfied, that the respondents wrongfully applied the mandate of rule 4(2)(a) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, for denying salary for the period the petitioner discharged his duties as Ayurvedic Medical Officer. It is

also not possible for us to accept that the deeming fiction of law so as to place an employee under suspension who is in police/judicial custody, could have been extended by the respondents, under the mandate of the aforesaid rule, to the period from 8.10.1999 to 3.10.2000, firstly because, the petitioner was neither under police custody nor under judicial custody during the aforesaid period, and secondly because, the petitioner had physically rendered service for the aforesaid period and received emoluments therefor. Accordingly, in so far as the impugned order dated 21.6.2005 is concerned, the same is liable to be set aside to the extent that it relates to the period when the petitioner had rendered service. As such, the order dated 7.6.2005 qua the suspension of the petitioner is upheld for the period from 3.10.1999 to 7.10.1999, and the same is set aside on the issue of recovery of salary, for the period subsequent to 7.10.1999. For the same reason, the recovery of salary already paid to the petitioner, for the period beyond 8.10.1999 is hereby also set aside.

Disposed of in the aforesaid terms.

(J.S. Khehar)
Judge

(L.N. Mittal)
Judge

April 18, 2007.
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